

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2663

IN THE MATTER OF:

Served February 8, 1985

Application of MOBILE CARE, LTD., )  
for a Certificate to Conduct )  
Special Operations -- "Transportation Disadvantaged Persons" )

Case No. AP-84-42

By application filed October 18, 1984, Mobile Care, Ltd. ("Mobile Care" or "applicant"), seeks a certificate of public convenience and necessity to conduct special operations transporting transportation disadvantaged persons, 1/ together with their attendants and baggage in the same vehicle as passengers, between points in the Metropolitan District. 2/

The purpose of the instant application is to remove the restrictions on applicant's existing authority as embodied in WMATC Certificate No. 65. At present, Mobile Care may transport only passengers who are confined to wheelchairs and do not participate in the District of Columbia Medicaid program. If this application were granted, applicant would be authorized to transport elderly and disabled persons, including ambulatory persons and Medicaid recipients. Moreover, applicant would have no size restrictions on its vehicles.

Notice of this application was duly published, and no protests were filed. A public hearing on the matter was held on December 11, 1984, at which Mr. Kent Miller testified on behalf of the applicant. Two public witnesses testified in support of the application.

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1/ "Transportation-disadvantaged persons are those individuals who by reason of age, physical or mental disabilities are unable, without special facilities or special planning or design, to utilize transportation facilities and services as effectively as persons who are not so affected." WMATC Order No. 2015, served August 7, 1979, pp. 3-4.

2/ To the extent that the instant application could be construed to seek authority to provide transportation between points solely within the Commonwealth of Virginia, it was dismissed for want of jurisdiction by Order No. 2626, served November 5, 1984.

Mr. Miller has been the owner and president of Mobile Care since June 1, 1984. Market research in the form of personal interviews conducted by him with personnel -- in most cases directors of social services -- at nursing homes in Montgomery and Prince George's Counties, Md., and the District of Columbia indicates a need by groups comprised of ambulatory and non-ambulatory persons for transportation for social purposes. Such groups vary in size but may be as large as 24 persons and usually include persons who are marginally ambulatory. Mr. Miller is aware of no private carriers currently providing this service. On cross-examination, Mr. Miller testified that his company receives three or four calls per month requesting transportation for ambulatory persons. According to Mr. Miller, applicant's excess capacity is 40 percent, and it is to reduce that excess capacity that Mobile Care has applied for removal of its restriction against transportation of participants in the District of Columbia Medicaid Program.

The proposed service would be conducted using five to six 15-passenger vans. Applicant currently owns four such vans all of which are equipped with wheelchair tie downs and either wheelchair ramps or wheelchair lifts. In addition, applicant plans, irrespective of the outcome of this application, to lease two 1985 15-passenger vans to be equipped with electric lifts and wheelchair locks. 3/ If its restriction to transportation in vehicles with a manufacturer's designed seating capacity of 15-passengers or less is removed, applicant would purchase an extended van which could be converted to hold four ambulatory and four non-ambulatory persons. All other vehicles can seat one ambulatory passenger. If its application is granted, Mobile Care will convert one 15-passenger van from wheelchair use to ambulatory seating. Minor maintenance of vehicles, including inspection by each driver and review by the operations manager is performed daily. Bi-weekly maintenance checks are performed by a mechanic, and vehicles under warranty are returned to the dealer to maintain warranty obligations. Applicant employs four full-time drivers, most of whom have been trained in first aid and in CPR. If this application is granted, applicant plans to hire two new drivers; however, no new driver will be given his own run for 30 days.

As is Mobile Care's current service, the proposed service will be available 24 hours a day, seven days a week upon request. Normal business hours are 7:30-8:30 a.m. to 6:00 p.m. although, according to Mr. Miller, in recent weeks business has extended from 7:00 a.m. to 10:30 p.m.

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3/ At least one of the two 1985 vans will be used as additional equipment. The other vehicle will either be used as additional equipment or as a replacement vehicle for applicant's oldest van, a 1979 vehicle which, according to Mr. Miller, is in excellent condition.

Applicant's proposed tariff provides for a one-way fare of \$25 per person, whether ambulatory or non-ambulatory, for the first ten miles plus \$1 for each mile thereafter; round-trips are \$43 per person for the first 20 miles plus \$1 for each mile thereafter. Group rates are available for preformed parties. Under the group rate, charges consist of the applicable per-person rate for the first passenger plus \$3.50 for each ambulatory passenger and \$7.50 for each additional non-ambulatory passenger. Additional charges cover attendants, airport and institutional transfers, waiting time, cancellation, same-day appointments and service outside the usual service week. A separate one-way fare of \$26 for the first 20 miles plus \$.75 for each mile thereafter is provided for the Montgomery County Health Department, Prince George's County Health Department and Maryland Medical Assistance.

Order No. 2626 described applicant's financial status as follows:

Applicant's balance sheet, dated September 30, 1984, indicates assets of \$27,533 including \$9,904 in accounts receivable and \$12,236 in revenue vehicles after depreciation. The balance sheet lists current liabilities of \$17,627 and long-term liabilities of \$13,671 in addition to a retained earnings deficit of \$3,764. For the period January 1, 1984, through September 30, 1984, applicant realized revenues of \$66,577 and incurred "contract costs" and operating expenses of \$63,738 resulting in a net profit of \$2,840. For calendar year 1985, applicant projects an operating ratio before taxes of 89, based on projected revenues of \$218,500, projected "contract costs" of \$145,441 and projected operating expenses of \$48,944.

According to Mr. Miller, the terms "contract costs" and "contract sales" were introduced into applicant's books at a time, two and one-half to three years ago, when Mobile Care was heavily involved in school bus transportation pursuant to contracts with schools and government agencies. Use of the terms persisted after the contract work ceased with the result that direct contract costs constitute general operating expenses including maintenance, gas, oil, tires, standard payroll, payroll taxes, some casual labor and insurance. Contract sales constitute revenues. Mr. Miller has instructed his accountants to cease using this terminology.

Finally, Mr. Miller testified that prior to his purchasing Mobile Care, group trips which included ambulatory persons were occasionally booked on applicant. However, that practice ceased when he became owner of Mobile Care.

Margaret Pulley, director of recreation, the Washington Home, Washington, D.C., testified in support of the application. In the course of her duties, Ms. Pulley plans and organizes trips for the Home's 178 residents about 25 of whom are ambulatory. On cross-examination, she testified that some residents are Medicaid participants. The trips are recreational in nature involving outings to the Kennedy Center, movie theaters, shopping areas, restaurants and private homes. Ms. Pulley schedules at least three trips per month for groups composed of ambulatory and non-ambulatory persons which range in size from four to ten residents. Although most trips are to points within the District of Columbia, Ms. Pulley testified that she requires transportation to Montgomery and Prince George's Counties, Md., approximately four times a year and to Northern Virginia approximately twice a year.

Ms. Pulley testified that a carrier capable of transporting ambulatory and non-ambulatory persons in the same vehicle is needed. She currently tailors the composition of her groups to the vehicles available. Although she has never failed to make arrangements for a trip because she couldn't find a large enough vehicle or series of vehicles to transport the number of persons desired, there have been times when she has been unable to transport ambulatory persons due to lack of equipment.

Prior to June, 1984, Ms. Pulley used Mobile Care to transport groups of one ambulatory and four non-ambulatory persons. When Mr. Miller bought applicant, she was informed that Mobile Care would no longer be available to transport ambulatory persons. She has used Murray's Non-Emergency Medical Transport Service ("Murray's"), but finds that it has insufficient non-ambulatory capacity for her needs in general. She has also used Ironsides Medical Transportation Corporation <sup>4/</sup> and the District of Columbia Recreation Department to handle groups composed of ambulatory and non-ambulatory persons. Although these carriers transport both ambulatory and non-ambulatory persons, they lack the capacity to transport groups of the size or composition (ratio of ambulatory to non-ambulatory) for which the witness needs transportation.

According to Ms. Pulley, the largest group for which transportation is needed is 12 persons, three of whom are ambulatory. If this application is granted, Ms. Pulley would use Mobile Care. She has used applicant in the past and, with one exception, it has always been able to provide transportation. Furthermore, she is familiar with its rates and charges, and she finds them to be satisfactory.

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<sup>4/</sup> Ironsides is restricted against providing transportation for ambulatory persons.

Jo Baker King is continuing care coordinator for Group Health Association, a health maintenance organization ("HMO") with facilities in Montgomery and Prince George's Counties, Md., Northern Virginia, and the District of Columbia. Ms. King arranges transportation within the Group Health system and between subscriber's residences, including nursing homes, throughout the Washington Metropolitan area, and Group Health's facilities. Ms. King requires transportation for approximately 20 persons a week, two-thirds of whom require wheelchairs. Other persons for whom transportation is required include marginally ambulatory and elderly persons. Some of these persons are accompanied by aides although the majority are not. Group Health's needs are usually for the transportation of a single passenger. On cross-examination, the witness testified that only a small percentage of Group Health's patients are Medicaid, and she uses the Medicare/Medicaid system to provide transportation for these passengers.

Ms. King currently uses Mobile Care to transport wheelchair passengers. Persons who are marginally ambulatory are contracted for as wheelchair passengers. According to Ms. King, when Mobile Care arrives, passengers are either in wheelchairs, or she has requested that Mobile Care provide a wheelchair for them. She has been unable to obtain transportation for ambulatory passengers. Upon calling Murray's for this purpose she was told without elaboration that it would be unable to provide such transportation. If Mobile Care's restriction against transportation of ambulatory persons is removed, she plans to use applicant to transport ambulatory persons as well as non-ambulatory persons. She is familiar with Mobile Care's rates and finds the rate for ambulatory persons attractive.

In determining whether applicant has met the requisite burden of proof as set forth in Title II, Article XII, Section 4(b) of the Compact, we turn first to the issue of applicant's fitness. Applicant currently holds authority to transport non-ambulatory persons between points in the Metropolitan District, excluding participants in the D.C. Medicaid program, and limited to vehicles seating 15 passengers or less. By its application, Mobile Care seeks authority to transport transportation disadvantaged persons including participants in the District of Columbia Medicaid Program throughout the Metropolitan District unrestricted as to vehicle size. If its application is granted, Mobile Care will combine its present and proposed services. Mobile Care currently owns four vehicles, one of which will be converted for ambulatory use, resulting in combined seating capacity of approximately 12 wheelchair passengers and 11 ambulatory passengers. Two additional vehicles are in the process of being leased, resulting in additional capacity of at least four wheelchair passengers and one ambulatory passenger. 5/ The evidence indicates that the vehicles

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5/ This minimum additional capacity assumes that one of the two new vehicles would be used to replace one of the four existing vehicles.

are regularly maintained and inspected. Applicant's drivers have experience providing transportation for handicapped persons as well as training which may be useful in providing service to transportation disadvantaged persons. A review of Mobile Care's finances indicates a small deficit in retained earnings. However, the deficit has been steadily shrinking under the management of Mr. Miller. Furthermore, applicant had an operating ratio of 95.7 percent for 1984 and projects an operating ratio of 89.9 percent for 1985, a margin adequate to the provision of the additional service applicant proposes. For these reasons, we find Mobile Care financially and operationally fit.

Mr. Miller testified that ambulatory patients had been transported by Mobile Care under its previous owner. However, no such transportation has been conducted since Mr. Miller assumed ownership of the company in June 1984. The testimony of Mobile Care's public witness, Ms. Pulley, corroborates Mr. Miller's testimony. Ms. Baker testified that Group Health contracts with Mobile Care for transportation of persons as wheelchair passengers only. While this includes some persons who are marginally ambulatory, Mobile Care's drivers either find passengers in a wheelchair when they arrive or have been asked to supply a wheelchair for them. Thus, there is no indication on the record that applicant knowingly operated outside its authority by transporting non-ambulatory persons after Mr. Miller bought Mobile Care. Therefore, we find applicant fit as to compliance.

Based on a review of the evidence of record, we further find that applicant has proved that the public convenience and necessity require the proposed service as it relates to transportation disadvantaged persons. Both of applicant's public witnesses require transportation throughout the Metropolitan District on a regular basis for transportation disadvantaged persons including the elderly and those who are marginally ambulatory due to illness or disability. Both have been unable to obtain adequate service from a properly certificated carrier. No carrier appeared to protest this application or assert its availability to provide the proposed service. Thus, applicant has established a prima facie case which stands unrebutted as to the transportation disadvantaged's need for additional transportation services.

However, we note that neither of applicant's public witnesses addressed the need for transportation of participants in the D.C. Medicaid program. On cross-examination, Ms. Pulley testified only that the Washington Home's residents included Medicaid participants. Ms. Pulley arranges only recreational transportation. Since Medicaid only pays for transportation to and from medical appointments her testimony simply does not address the issue of Medicaid service. The transportation arranged by Ms. Baker, on the other hand, is exclusively for medical appointments. However, she testified that because Group Health is an HMO very few of its patients are participants in Medicaid.

She testified on cross-examination that she arranges transportation for those few patients through the Medicare/Medicaid system, but made no mention that that arrangement was inadequate in any way or that she required, or even desired, a different arrangement. Accordingly, applicant has adduced no evidence upon which a finding of need for additional Medicaid service could be based.

Coming to the matter of Mobile Care's restriction as to vehicle size, we note that there is no testimony that a vehicle with a capacity in excess of 15 passengers (excluding the driver) is required. Ms. Baker testified that most of her transportation needs consist of single-passenger transfers. Ms. Pulley testified tht she needed transportation which could accommodate ambulatory persons together with non-ambulatory persons for groups of up to 12, no more than three of whom would be ambulatory. Thus, neither witness's testimony addressed a need for a vehicle larger than that for which applicant currently has authority.

It is clear from applicant's own testimony (Tr. 6-10) and from its application (Exhibit C) that even the largest equipment applicant proposes to operate, an extended van, would be configured to accommodate four wheelchairs plus four ambulatory passengers.

Applicant's restriction to vehicles with a manufacturer's designed seating capacity of 15 passengers, excluding the driver, does not prohibit it from operating a larger vehicle permanently and appropriately converted and equipped to carry a combination of up at 15 ambulatory and non-ambulatory passengers. In Order No. 2559, served May 24, 1984, we noted that:

[T]he concept of "seating capacity" as used in the Compact is interpreted by us to mean the manufacturer's maximum designed seating capacity for a particular vehicle. This interpretation provides an objective standard that is easy to apply and enforce, and promotes passenger safety by discouraging makeshift modification of vehicles . . . . Such a situation is distinguishable from the case where a vehicle is customized and, in effect, re-manufactured to a new designed seating capacity.

Thus, applicant already has the authority to operate the eight-passenger vehicle it proposes, provided it is permanently equipped as described to transport not more than 15 passengers.

THEREFORE, IT IS ORDERED:

1. That Mobile Care, Ltd., is hereby granted authority to transport transportation disadvantaged persons between points in the Metropolitan District restricted to vehicles with a manufacturer's

designed seating capacity of 15 passengers, excluding the driver, and further restricted against transportation of participants in the District of Columbia's Medicaid program.

2. That, to the extent it is not specifically granted, the application of Mobile Care, Ltd., stands denied.

3. That Mobile Care, Ltd., is hereby directed to file two copies of its WMATC Tariff No. 3 plus a title page in conformance with Commission Regulation No. 55-04 and a revised equipment list within 30 days of the date of issuance of this order.

4. That upon compliance with the requirements of the above ordering paragraph, a revised Certificate of Public Convenience and Necessity No. 65 shall issue.

BY DIRECTION OF THE COMMISSION, COMMISSIONERS WORTHY, SCHIFTER AND SHANNON:

  
WILLIAM H. MCGILVERY  
Executive Director